No. 82-1788

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ALABAMA POWER COMPANY,

Petitioner,

v.

NUCLEAR REGULATORY COMMISSION and THE UNITED STATES OF AMERICA, ET AL.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR ALABAMA ELECTRIC COOPERATIVE, INC. IN OPPOSITION

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QUESTIONS PRESENTED

In the view of Alabama Electric Cooperative,* none of the questions proffered by petitioner is genuinely presented by this record. At the very least, the four questions asserted by Alabama Power Company should be rephrased so as to read in substance as follows:

1. Whether the Nuclear Regulatory Commission properly applied antitrust principles in assessing Alabama Power Company's monopoly power and anticompetitive conduct shown by the voluminous record.

2. Whether the record supported the Commission's determination that a situation inconsistent with the antitrust laws would be "maintained", within the meaning of Section 105c(5) of the Atomic Energy Act, 42 U.S.C. § 2135(c)(5), unless appropriate conditions were attached to Alabama Power Company's nuclear power plant licenses.

3. and 4. Whether the Eleventh Circuit properly concluded that, on the record, there was no proper basis for the Court to overturn the Commission's order with respect

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*Alabama Electric Cooperative, Inc. is a non-profit electric generation and transmission cooperative organized in 1941 under Title 18 of the Code of Alabama. It is owned, controlled and operated by its members, which are: City of Andalusia, Baldwin County Electric Membership Corporation, City of Brundidge, Central Alabama Electric Cooperative, Choctawhatchee Electric Cooperative, Clarke-Washington Electric Membershp Corporation, Coosa Valley Electric Membership Corporation, Covington Electric Cooperative, Dixie Electric Cooperative, City of Elba, Escambia River Electric Cooperative, Gulf Coast Electric Cooperative, Micolas Mills, City of Opp, Opp Mills, Pea River Electric Cooperative, Pionner Electric Cooperative, South Alabama Electric Cooperative, Southern Pine Electric Cooperative, Tallapoosa River Electric Cooperative, West Florida Electric Cooperative, Wiregrass Electric Cooperative.

to (a) the need for conditioning the licenses on antitrust grounds, and (b) the particular remedy determined by the Commission to be appropriate – namely, a requirement that Alabama Power Company offer to sell to Alabama Electric Cooperative a pro rata ownership participation (in the range of a 4% to 7% share) in the Farley Nuclear Plant, and offer access, on a compensable basis, to the Company's transmission system.

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1. NO BASIS HAS BEEN SHOWN FOR GRANTING CERTIORARI

Alabama Power's Petition for Certiorari should be the final unsuccessful thrust in its strenuous efforts to avoid the antitrust obligations required by its Nuclear Regulatory Commission licenses to operate the Farley Nuclear Plant. These antitrust conditions have been an integral part of the Company's licenses since August 10,

1981. After more than a decade of litigation before the Commission's Boards and the Commission itself and before the Eleventh Circuit, the Company has been unable to escape the legal consequences of its unlawful anticompetitive policies and practices which Congress has directed the Commission to remedy.[1]

No reasonable basis for a grant of certiorari is found in the Petition or the Amicus Brief. No conflict of circuits has been shown, nor could it be; in fact, Alabama Power acknowledges (Pet., p. i) that the case is one "of first impression". The case is intensely factual in nature, involving a transcript of over 28,000 pages, plus thousands of pages of prepared testimony and hundreds of exhibits, some of them very lengthy. The factual determinations were reached after careful assessment within the Commission and have been sustained on judicial review by the Eleventh Circuit. No showing has been made that further review of the legal principles involved in the case would be important to other proceedings either pending or probable; indeed it is Alabama Power's obduracy in resisting a sharing of ownership of nuclear units that gives Alabama Power a unique position setting it apart from other members of the utilities industry, which have entered into numerous ownership-sharing arrangements (including arrangements with cooperatives) in nuclear power projects.[2]

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[1]Although not mentioned in the Petition for Certiorari, Alabama Power's successive requests for a stay pending judicial review were denied by the Commission, 14 NRC 795 (October 22, 1981), and by the Eleventh Circuit (order issued January 20, 1982). After the Eleventh Circuit's unanimous affirmance of the Commission's licensing action, the Eleventh Circuit denied Alabama Power's motion for stay of mandate pending petition for writ of certiorari (order issued March 4, 1983) and Alabama Power's subsequent application for a stay was denied by Justice Powell on April 6, 1983 (No. A-795).

[2]These include ownership-sharing arrangements which have been made by Alabama Power's sister company, Georgia Power Company

Alabama Power's claims that the case involves a departure by the Eleventh Circuit from accepted and usual procedures for judicial review are no more than extravagant rhetorical hyperbole from a defeated litigant. The meticulous analysis by the Commission's Appeal Board and the unanimous opinion of the Eleventh Circuit show that well-established legal principles have been properly extrapolated and applied to this particular factual situation. The decisions below are clearly correct. Review on the merits by the Supreme Court is not warranted by any of the customary criteria.

As the opinions make clear, Alabama Power's contentions raised in its Petition are based on serious distortions of the Eleventh Circuit and Commission decisions and of the record below.[3] The Eleventh Circuit unanimously determined (692 F.2d at 1369 [Pet.App. A-12]):

(both being wholly-owned subsidiaries of The Southern Company), with a Georgia cooperative, Oglethorpe Electric Membership Corporation.

[3]E.g., the contentions that the great bulk of Alabama Power's predatory conduct ceased prior to or during the early course of the antitrust review (Pet., pp. 3, 6, 7, 14-15, 22; Amicus Brief, p. 16) are grossly exaggerated, were rejected by the Appeal Board (13 NRC at 1107 [Pet.App. A-94]), and are belied by the record. There is no evidence that Alabama Power's participation in the conspiracy to exclude Alabama Electric Cooperative and other small electric systems from the economic benefits of regional coordination in order to eliminate competition from such small systems has ceased (5 NRC at 946-957 [Pet.App. A-238—A-249]). The Company's anticompetitive behavior in denying the Cooperative ownership access to the Farley nuclear units has continued through the agency adjudication and judicial review process. Amicus' contention (Brief, p. 13) that the Company's rate (price) cutting was "within profitable margins" is contrary to the evidence as noted by the Licensing Board, 5 NRC at 958 [Pet.App. A-250]).

> "The conclusions of the NRC concerning relevant markets in the wholesale, retail, and coordination services markets are amply supported in this extensive and thorough record. We affirm those findings and the holding that Alabama Power has exerted monopoly power in each of these markets that could and probably would lead to antitrust situations."

And the Court went on to conclude (692 F.2d at 1369-1370 [Pet.App. A-13]):

> "The [license] conditions are specifically fashioned to address the anticompetitive situation which could arise from an unconditional license grant. While an affirmative condition requiring the sale of an ownership interest is indeed extreme, the approach of Congress reflects the uniqueness of legislative control over nuclear development. Congress determined the need for great expertise and wide powers. Both the responsibility and authority were granted to the Nuclear Regulatory Commission. The imposition of ownership conditions along with conditions providing for access to Alabama Power's transmission facilities is not an abuse of nor beyond that delegated discretion. We AFFIRM the remedy."

Alabama Power's legal contentions have been thoroughly considered and rejected within the Commission and by the Eleventh Circuit. Particularly in light of the repeated and consistent rejection of the Company's arguments, which the Eleventh Circuit found lacking in "common sense" (692 F.2d at 1368 [Pet.App. A-9]), there is no basis for this Court to grant certiorari.

While Alabama Power and Amicus assert hypothetical and imaginative adverse impacts on the power industry from the Cooperative's ownership access of 4%-to-7% of the Farley Nuclear Units, these objections fade away in

light of utility industry practice which demonstrates joint ownership of nuclear units to be an industry norm, rather than the rare case or exception. As the Government informed the Eleventh Circuit in opposing one of Alabama Power's stay applications there:[4]

> "8. Antitrust conditions similar to those imposed by the Commission on APCo's licenses are found in numerous nuclear power plant licenses."
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> * * *
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> "10. A requirement to sell a participation share leads to joint ownership. Joint ownership of nuclear plants is not uncommon within the industry. Of 71 nuclear units now operating, 50 are singly owned; whereas, 21 are jointly owned. While at least one of these joint ownership arrangements, Hatch Unit No. 2, was required by antitrust license conditions, most were voluntary. Of the nuclear generating units under construction but not yet operating, 53 of 87 units are to be jointly owned. Of those 53 units, antitrust license conditions or commitments by the applicants to the Department of Justice require the applicants to offer ownership interest in 24 of the nuclear units to other electric utilities in the area. Because nuclear power plants are highly capital intensive, joint ownership provides advantages in permitting economy of scale while diversifying capital requirements and economic risk."

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[4]Affidavit dated December 21, 1981, of Argil L. Toalston, NRC Section Leader of the Antitrust Section, Antitrust and Economic Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, filed in support of Respondents Nuclear Regulatory Commission and United States' Response Opposing Alabama Power Company's Motion For A Stay And Oral Argument (pp. 6-7), filed December 23, 1981.

Thus, the Company's and Amicus' claims as to the importance of this case to the utility industry pale into insignificance when viewed in light of actual industry practice.[5]

II. THE PETITION SERIOUSLY MISCHARACTERIZES THE ELEVENTH CIRCUIT'S OPINION

The Company and Amicus focus on the language of the Eleventh Circuit that the Commission's antitrust review is broader than the "traditional antitrust analysis" (692 F.2d at 1368 [Pet.App. A-10] and that antitrust principles are not to be applied "in the usual way to nuclear power regulation" (Id. at 1369 [Pet.App. A-12]). The Court thoroughly explicated such dicta in its discussion rejecting the Company's narrow and cramped reading of Section 105c of the Atomic Energy Act, 42 U.S.C. § 2135(c). The Court's examination of the statute and of the legislative history makes evident that a broad review of the Company's market power and anticompetitive conduct is required, and that proof of a full-fledged violation of the antitrust laws is not a prerequisite to the Commission's application of remedial license conditions to eliminate the maintenance or aggravation of a preexisting an-

[5]Alabama Power has been on formal notice from the Commission for nearly eleven years that the permission granted to construct and operate the Farley units has always been conditioned upon Alabama Power's willingness to accept whatever antitrust license conditions (which Alabama Power knew might include proportionate ownership access to the units) might be determined to be appropriate. This notice, which explicitly warned the Company that "in the course of its planning and other activities, applicant [Alabama Power] will be expected to conduct itself accordingly," has been embodied in the construction permits (CPPR-84 and 86) since 1972.

ticompetitive situation.[6] In any event, as Amicus concedes, even though the Commission's review is a "vehicle for curing *incipient* antitrust violations that *might* come to fruition after a nuclear plant was in operation..." (Amicus Br., p. 8, emphasis added), in this particular case Amicus also concedes that the "NRC held that APCo's unwillingness to share its nuclear units with other firms constituted a violation of Section 2 of the Sherman Act...." (Amicus Br., p. 11); 13 NRC at 1045 [Pet. App. A-32].

In sum, the Court's language, which is the focus of the Company and Amicus attack, merely summarizes what is obvious from the statute and its legislative history – that "Congress did not intend that the NRC limit its concerns to activities which are mature violations of the antitrust laws," and that

> "the Joint Committee Report did not limit the NRC's inquiry to probable contravention of the antitrust laws, but included 'or the policies clearly underlying these laws.' Here again, a traditional antitrust enforcement scheme is not envisioned, and a wider one is put in place."

692 F.2d at 1368 [Pet.App. A-10–A-11]. The same correct interpretation was articulated by the Commission tribunals at ALAB-646, 13 NRC at 1044-1046 [Pet.App. A-31–A-33]; LBP-77-24, 5 NRC at 837-845 [Pet.App. A-129–A-137]; see also *Consumers Power Company (Midland)*, ALAB-452, 6 NRC 892, 907-914 (1977). Thus,

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[6]With characteristically overzealous advocacy, Alabama Power (Pet., pp. 10-11) argues that the Joint Committee Report calls for a "violation". In fact, the language quoted by Alabama Power relates to a sentence proposed by Senator Humphrey, which was deleted from the Bill which became the 1954 Act, and has no relation to the 1970 Amendments which produced the present Section 105c. H.R. Rep. No. 91-1470, 91st Cong., 2d Sess., reprinted in U.S. Code Cong. & Ad. News, 4981 at 4991-4992 (1970).

the argument that the Eleventh Circuit affirmed the antitrust review on grounds different from those articulated by the Commission's Boards is frivolous.

III. IN ADDITION, THE IMPACT OF REGULATION WAS PROPERLY AND THOROUGHLY CONSIDERED BELOW

The Eleventh Circuit found the Commission's antitrust review "amply supported in this extensive and thorough record." 692 F.2d at 1369 [Pet.App. A-12]. And the Company's "time worn and discredited argument" (13 NRC at 1040 [Pet.App. A-27]) that because some aspects of its operations are regulated, it cannot as a factual matter have monopoly power has been amply considered and firmly rejected by both the Licensing and Appeal Boards. The basic assumption on which the Company's argument (Pet., pp. 15-19) is based – that the Appeal Board ignored the regulatory environment in analyzing Alabama Power's market power – is contrary to fact.[7] The interplay between regulation and the areas of business conduct engaged in by the Company which are subject to antitrust scrutiny was extensively discussed by the Licensing Board. 5 NRC at 861-879, 882-885, 899-901 [Pet.App. A-153–A-171, A-174–A-177, A-191–A-193]. In so doing, the Licensing Board took note (5 NRC at 878 [Pet.App. A-170]) of the exhortation of the Alabama Public Service Commission:

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[7]Among other reasons, the thorough factual consideration of the impact, if any, of regulation on Alabama Power's monopoly power and its anticompetitive conduct in this case renders totally irrelevant the Company's claimed reliance (Pet., pp. 16, 17, 19) on *Mid-Texas Communications Systems, Inc.* v. *AT&T*, 615 F.2d 1372 (5th Cir. 1980) and the cases cited at Pet., p. 17, n. 17.

> "The final adjustment which the Commission finds necessary relates to failure of the Company – under the statutory duties imposed on it to operate under 'efficient and economical management,' – to take advantage of alternative methods of financing construction of the Joseph M. Farley Nuclear Plant."
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> * * *
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> "We are of the opinion and believe that this record shows that the proper exercising of 'efficient and economical management' dictates that the Company take advantage of opportunities to divest itself of 25% of the Farley nuclear plant, either to Company affiliates or to the Rural Electric Cooperatives and municipal utilities. Such an action by the Company would make its rates more reasonable to the public."

Opinion of the Alabama Public Service Commission in Docket No. 17094, July 12, 1976, pp. 5-6, affirmed in pertinent part, *Alabama Power Company* v. *Alabama Public Service Commission,* Circuit Court of Montgomery County, Alabama, In Equity, Order issued August 11, 1976. This, then, is quite the opposite of a case where there is a repugnancy between regulatory and antitrust policy. Here both regulatory and antitrust considerations support granting to the Cooperative ownership access to the nuclear facilities, and the Company's persistent refusal to grant such access is strongly condemned by both regulatory and antitrust policy.[8] The Appeal Board

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[8]In any event, as the Appeal Board stated (13 NRC at 1041, n. 36 [Pet.App. A-28]):

> "Moreover, as noted in the margin of our *Midland* decision, 'it is settled that even conduct formally approved by a regulatory agency may be the basis of an antitrust violation where agency approval conveys no exemption from the antitrust laws. *United States* v. *Radio Corp. of America, supra,* 358 U.S. at 350-51; *Cantor* v. *Detroit Edison Co., supra,* 428 U.S. at 596-98; *California* v. *FPC,* 369 U.S.

likewise fully discussed Alabama Power's regulatory impact claims and found them without merit. 13 NRC at 1039-1042, 1072-1074 [Pet.App. A-26—A-29; A-59—A-61]. Both Boards assiduously reviewed Alabama Power's claims; each determined that as a matter of fact the Company held, and exercised in an anticompetitive manner, monopoly power unfettered by regulatory constraints.

In any event the existence of subject matter jurisdiction of federal or local regulatory agencies[9] in no way impairs the validity of the carefully-made findings as to Alabama Power's monopoly power, and its anticompetitive exercise

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482, 489 (1967); *United States* v. *Philadelphia Bank, supra,* 374 U.S. at 350-52; *Litton Systems, Inc.* v. *Southwestern Bell Tel. Co.,* 539 F.2d 418, 422-24 (5th Cir. 1976); *City of Mishawaka* v. *Indiana and Michigan Electric Co., supra; Almeda Mall, Inc.* v. *Houston Power and Light Co., supra,* Trade Reg.Rep.par. 61,485 (S.D.Tex. 1977).' 6 NRC at 1008 fn. 447."

To those dispositive citations may be added the even more conclusive ruling in *Californa Liquor Dealers* v. *Midcal Aluminum,* 445 U.S. 97, 99-106 (1980). See also *United States* v. *Southern Motor Carriers Rate Conference, Inc.,* 672 F.2d 469 (5th Cir. 1982).

[9]Moreover, Alabama Power's bare assertions of the jurisdictional authority of the Alabama Public Service Commission (APSC) and of the Federal Energy Regulatory Commission (formerly, Federal Power Commission) are highly overstated and largely contradicted by the record facts. For example, none of Alabama Power's numerous acquisitions of and mergers with other electric systems, by which it initially acquired its dominant market position, was ordered or directed by any regulatory agency. Alabama Power's claim of a "duty to serve," by which it seeks to justify its preemptive development of transmission and generation capacity, has been rejected by the Supreme Court of Alabama in *Alabama Power Company* v. *Alabama Public Service Commission,* 179 So.2d 725, 730, rehearing denied (1965). The Company's own retained expert witness on Alabama regulatory law, Robert Steiner, testified that the APSC has never made a determination as to any authority to order wheeling services (Steiner, Tr. 22,593); APSC does not have jurisdiction to regulate the sale of elec-

of that power, with respect to those subject matter areas. *Otter Tail Power Co.* v. *United States,* 410 U.S. 366 (1973).

The facts amassed in this record amply negate Alabama Power's claim that regulation precludes it from holding or improperly exercising monopoly power. None of Alabama Power's conduct and patterns of conduct condemned by the Licensing Board and the Appeal Board were compelled by any regulatory authority; nor was any of Alabama Power's conduct an adherence to a regulatory scheme which overrode antitrust considerations. Regulation simply did not hinder the Company's course of anticompetitive conduct directed at Alabama Electric Cooperative. Both Boards made extensive findings as to the Company's anticompetitive intent and purpose underlying its actions designed to foreclose Alabama Electric Cooperative from attempting to compete with the Company.[10]

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tric power by one utility to another within the state of Alabama (Steiner, Tr. 22,584). Alabama Power, itself, makes the decision whether or not to seek a certificate for a planned extension of its electric system (Farley, Tr. 19,117; Steiner, Tr. 22,687). In its view, no certificate is required for any extension of its distribution system (Farley, Tr. 19,142; Steiner, Tr. 22,688), or for any 115 Kv transmission extension in recent years (Farley, Tr. 19,143). The APSC has never ordered the Company to obtain a certificate (Farley, Tr. 19,143; 19,147-19, 148).

[10]5 NRC at 925, 936-937, 944-945, 953-957, 957-959 [Pet. App. A-217, A-228 – A-229, A-236 – A-237, A-245 – A-249, A-249 – A-251]; 13 NRC at 1076-1077, 1079-1081, 1084-1086 [Pet.App. A-63 – A-64, A-66 – A-68, A-71 – A-73]. Accord, *Midland, supra,* 6 NRC at 922-923, 1019, 1026-1031; and *City of Mishawaka* v. *American Electric Power Co., Inc.,* 616 F.2d 976, 985 (7th Cir. 1980), cert. denied, 449 U.S. 1096 (1981). These extensive findings clearly contradict the unsupported implication in Amicus Brief (p. 11) that Alabama Power's conduct might have been "motivated by legitimate business considerations...."

Alabama Power's actions condemned in this proceeding clearly encompassed purposeful anticompetitive conduct and specific anticompetitive intent directed against Alabama Electric Cooperative, which conduct was in no way compelled or directed by any regulatory authority. The unanimous Eleventh Circuit decision affirmed these findings and conclusions.[11] The Company's allegations as to regulatory compulsion were thoroughly aired and thoroughly rejected as unfounded. The Company's and Amicus' renewal of these rejected and far-fetched claims furnishes no basis for review by this Court.

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[11]Thus the record overwhelmingly establishes that the Company's "monopoly power has been . . . maintained through improper means..." *Berkey Photo, Inc.* v. *Eastman Kodak Co.*, 603 F.2d 263, 274 (2d Cir. 1979) cert. denied, 444 U.S. 1093 (1980). The principles for which Alabama Power cites *Berkey* (Pet., pp. 19, 22) are wholly inapplicable to this case, which concerns a situation inconsistent with the antitrust laws and their underlying policies. *Berkey* involved the measure of injury for money damages, not prospective relief to alleviate the concerns entailed in the situation inconsistent with the antitrust laws as is the case here (603 F.2d at 284-285). Further, *Berkey* involved a monopolist's development of superior products through business acumen. This major factor is wholly absent in this case which involves a monopolist's refusal to deal in monopolized products (coordination services, low-cost nuclear power); a boycott in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1); anticompetitive exclusive dealing contracts; price cutting to foreclose market entry; and participation in a widespread regional conspiracy to exclude small competitors from access to a necessary product market. None of Alabama Power's conduct relates to the innovative development of new products. The only innovativeness shown by the Company on this record is in its dogged persistence over the years in flouting the policies of the antitrust laws through tactically-timed exertions of its monopoly power to disadvantage Alabama Electric Cooperative.

IV. THE LICENSE CONDITIONS REQUIRED BY THE COMMISSION ARE WHOLLY APPROPRIATE TO THE SPECIAL CIRCUMSTANCES OF THIS CASE AND CLEARLY WITHIN THE COMMISSION'S REMEDIAL AUTHORITY

The Appeal Board elaborated in detail the bases for the ownership access, wheeling access and coordination provisions which it included in the Company's licenses. 13 NRC at 1096-1110 [Pet.App. A-83—A-97]. The Eleventh Circuit unequivocally affirmed the appropriateness of the antitrust remedial conditions and the Commission's discre tionary authority to require those specific conditions. 692 F.2d at 1369-1370 [Pet.App. A-12—A-13]. Alabama Power wholly fails to show any plausible basis for judicial revision of these conditions.[12] The remedies applied in this case are far less severe than several specifically authorized by Congress in Section 105c(6), 42 U.S.C. § 2135(c)(6) (including revocation of a license). They are clearly within

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[12]Alabama Power's contentions that the Cooperative's access to nuclear facilities should be conditioned on the Cooperative's forfeiture of congressionaly mandated tax and financing advantages would, in itself, sanction an improper use of monopoly power to deprive the Cooperative of such ordinary, lawful business advantages as it may have. This would be in conflict with Section 2 of the Sherman Act, 15 U.S.C. § 2. Cf. *United States* v. *Grinnell Corp.*, 384 U.S. 563, 570-571 (1966); *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 424-425 (2d Cir. 1945). A basic purpose of the antitrust laws is to maximize competition by individuals and entities utilizing their respective lawful business "advantages". *American Federation of Tobacco Growers* v. *Neal*, 183 F.2d 869, 872 (4th Cir. 1950) (exclusion of outsider from trade board, in violation of Sherman Act § 1, 15 U.S.C. § 1, not excused by trade board's fear of outsider's advantages in taxes or construction costs). The well-settled rule is that antitrust remedial decrees should maximize competition by avoiding interference with ordinary, lawful business advantages. See, e.g., *United States* v. *National Lead Co.*, 332 U.S. 319, 351-353 (1947).

the broad remedial discretion which Congress granted to the Commission.[13] Compare, e.g., *Federal Trade Commission* v. *Mandel Bros.*, 359 U.S. 385, 392 (1959); *Jacob Siegal Co.* v. *Federal Trade Comm'n*, 327 U.S. 608, 611-613 (1946); *Jay Norris Inc.* v. *F.T.C.*, 598 F.2d 1244, 1250-1251 (2d Cir. 1979), cert. denied, 444 U.S. 980 (1979). As this Court said in *General Protective Committee* v. *SEC*, 346 U.S. 521, 534 (1954):

> "Here as in other fields (*Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177, 194) the relation of remedy to policy is peculiarly for the administrative agency. See *American Power Co.* v. *Securities & Exchange Commission*, 329 U.S. 90, 112."

See also *Canadian Tarpoly Co.* v. *U.S. International Trade Comm'n*, 640 F.2d 1322, 1326 (Ct. Cust. Pat. App. 1981); *De Vosta Rentals, Inc.* v. *Lee*, 488 F.2d 674, 678 (5th Cir. 1973), cert. denied, 416 U.S. 984 (1974). The Company's and Amicus' contentions regarding the remedial license conditions imposed in the circumstances of this proceeding warrant no further review by this Court.

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[13]See also H.R. Rep. No. 91-1470, supra at n. 6, U.S. Code Cong. & Ad. News at 5011-5012.

CONCLUSION

On a variety of grounds, each of which is by itself sufficient, it is evident that this Court should decline to hear the case on the merits. The petition for certiorari should be denied.

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